

1 The Honorable Marsha J. Pechman

2  
3  
4  
5  
6  
7  
8 UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

9 DIANNE KELLEY and KENNETH HANSEN, )

10 Plaintiffs, )

11 v. )

12 MICROSOFT CORPORATION, a Washington )  
13 corporation, )

14 Defendant. )

No. C 07-475 MJP

DECLARATION OF MICHAEL  
BURK IN SUPPORT OF  
MICROSOFT'S OPPOSITION TO  
PLAINTIFFS' MOTION FOR  
CLASS CERTIFICATION

15 I, MICHAEL BURK, hereby declare as follows:

16 1. I am employed by Microsoft Corporation ("Microsoft") and have been since  
17 June 2005. My current position at Microsoft is Senior Product Manager of Press Relations in  
18 the Windows Product Marketing Group. I have held that position since December 15, 2006.  
19 Before August 30, 2007, my position at Microsoft was Public Relations Manager in the  
20 Windows Product Marketing Group. I am over 18 years of age. I have personal knowledge  
21 of the facts set forth herein.

22 2. My responsibilities at Microsoft have included managing Microsoft's press  
23 outreach and public relations to make information about the Windows Vista Capable program  
24 and the Express Upgrade to Windows Vista program widely available to the public.

25 3. In order to inform the public about the PC hardware needed for the different  
26 editions of Windows Vista, and to provide detailed information about the Windows Vista

27  
DECLARATION OF MICHAEL BURK IN SUPPORT OF MICROSOFT'S  
OPPOSITION TO PLAINTIFFS' MOTION FOR CLASS CERTIFICATION  
(C 07-475 MJP) — 1

Davis Wright Tremaine LLP  
LAW OFFICES  
Suite 2200 • 1201 Third Avenue  
Seattle, Washington 98101-3045  
(206) 622-3150 • Fax: (206) 757-7700

1 Capable program, Microsoft created and carried out a media plan to make that information  
2 broadly available to the news media, including newspapers, magazines, online publications,  
3 reviewers, industry analysts, business press, trade press and metro press.

4 4. Microsoft launched the media plan with a press release that was issued on  
5 May 18, 2006, entitled "Microsoft and PC Manufacturers Make it Easier for Customers to Get  
6 Ready for Windows Vista" ("May 18 Press Release"). A copy of the May 18 Press Release is  
7 attached hereto as "Exhibit A." In the May 18 Press Release, Microsoft announced:

- 8 • the system requirements for a PC to qualify as either Windows Vista  
9 Capable or Windows Vista Premium Ready,
- 10 • the launch of the Windows Vista "Get Ready" Web site, on which  
11 Microsoft posted information including additional details about  
12 Windows Vista Capable and Windows Vista Premium Ready PCs and  
13 information on the different editions of Windows Vista, and
- 14 • the availability of a beta version of the Windows Vista Upgrade  
15 Advisor, a diagnostic software tool PC owners could use to help them  
16 determine which edition of Windows Vista their PCs would support, if  
17 they decided to upgrade to Windows Vista after it was released.

18 5. The May 18, 2006 Press Release also explained that Windows Vista Capable  
19 PCs "can run the core experiences of Windows Vista," while "[a] Premium Ready designation  
20 ensures that the PC will deliver even better Windows Vista experiences, including Windows  
21 Aero." Exhibit A at 2. The May 18 Press Release also contained Microsoft's  
22 recommendation "that customers seeking the best experiences with Windows Vista ask for  
23 PCs that are Premium Ready or choose PCs that meet or exceed the Premium Ready  
24 requirements." *Id.* at 3. The May 18 Press Release provided a table comparing the hardware  
25 requirements for Windows Vista Capable PCs with the additional hardware requirements for  
26 Windows Vista Premium Ready PCs and noted that "[s]ome features available in premium  
27

1 editions of Windows Vista, such as the ability to watch and record live TV, may require  
2 additional hardware.” *Id.* at 4. In a footnote to the comparison table, the May 18 Press  
3 Release noted that “Windows Aero requires the following,” listing the hardware requirements  
4 needed to run the Windows Aero user interface. *Id.* at 5 n. 2. Finally, the May 18 Press  
5 Release announced the “availability of a beta version of the Windows Vista Upgrade  
6 Advisor” that “will assess if customers’ devices will support the edition and features of  
7 Windows Vista that meets their needs.” *Id.* at 4-5.

8         6. On May 18, 2006, Microsoft also sent e-mail with information on the  
9 requirements for Windows Vista Capable PCs and the Windows Vista Premium Ready PC  
10 designation to The Associated Press, Reuters, Bloomberg L.P., eWeek.com, International  
11 Data Group (IDG), Information Week, CNET Networks, Inc., Microsoft Watch, The Seattle  
12 Post-Intelligencer, the Seattle Times Co., Betanews, Inc., CIO.com, CMP Media LLC,  
13 Datamonitor’s ComputerWire services, Computerworld, Inc., Cox Newspapers, InfoWorld  
14 Media Group, Internetnews.com, Network World, Inc., Red Herring, Inc., Redmond Media  
15 Group, SD Times, San Jose Mercury News, The San Francisco Chronicle, TechTarget,  
16 TheStreet.com, Inc., VARBusiness Integrated Media, Windows IT Pro, and vnunet.com.

17         7. Microsoft briefed analysts from Gartner, Inc., Forrester Research, Inc., IDC  
18 and Endpoint Technologies Associates, Inc., during the week of April 24, 2006, so that those  
19 analysts could inform their clients and the public about the requirements for Windows Vista  
20 Capable PCs and the Windows Vista Premium Ready PC designation.

21         8. On May 16, 2006, as part of the preparations for the May 18 Press Release,  
22 Microsoft sent e-mail about the requirements for Windows Vista Capable PCs and the  
23 Windows Vista Premium Ready PC designation to reporters and analysts from The  
24 Associated Press, Reuters, Bloomberg L.P., eWeek.com, International Data Group (IDG),  
25 Information Week, CNET Networks, Inc., Microsoft Watch, The Seattle Post-Intelligencer,  
26 The Seattle Times Co., Betanews, Inc., CIO.com, CMP Media LLC, Datamonitor’s

1 ComputerWire services, Computerworld, Inc., Cox Newspapers, InfoWorld Media Group,  
2 Internetnews.com, Network World, Inc., Red Herring, Inc., Redmond Media Group, SD  
3 Times, San Jose Mercury News, The San Francisco Chronicle, TechTarget, TheStreet.com,  
4 Inc., VARBusiness Integrated Media, Windows IT Pro, and vnunet.com.

5 9. During the week of May 15, 2006, Microsoft made telephone calls to reporters  
6 from The New York Times, USA Today, The Wall Street Journal, Business Week, Fortune,  
7 Newsweek, The Associated Press, The Washington Post and MSNBC to tell them about the  
8 forthcoming May 18 Press Release and give them information about the requirements for  
9 Windows Vista Capable PCs and the Windows Vista Premium Ready PC designation.

10 10. Microsoft offered and arranged for one-on-one meetings about the  
11 requirements for Windows Vista Capable PCs and the Windows Vista Premium Ready PC  
12 designation between Microsoft spokespeople Greg Amroffell and myself and reporters from  
13 The New York Times, USA Today, The Wall Street Journal, Business Week, Fortune,  
14 Newsweek, The Associated Press, The Washington Post, MSNBC, Computerworld, Inc.,  
15 DL.TV, PC Magazine, eWeek.com, Ziff Davis Publishing Holdings, Inc., CNET Networks,  
16 Inc., CMP Media LLC, Information Week, InfoWorld, LAPTOP Magazine, Network  
17 Computing, Max PC and the San Jose Mercury News. I estimate that between twelve and  
18 fifteen of these media outlets accepted Microsoft's offer and attended the one-on-one  
19 meetings, which took place shortly after the May 18 Press Release was issued.

20 11. Microsoft product managers participated in telephone interviews about the  
21 requirements for Windows Vista Capable PCs and the Windows Vista Premium Ready PC  
22 designation with members of the media shortly after the May 18 Press Release. Both Web-  
23 based and traditional media articles quoted these Microsoft managers and included  
24 information Microsoft provided about the requirements for both Windows Vista Capable PCs  
25 and Windows Vista Premium Ready PCs.

1           12. On October 24, 2006, Microsoft issued another press release titled "Microsoft,  
2 Industry Partners Offer Early Holiday Gifts to PC Buyers Across the World" ("October 24  
3 Press Release"). A copy of the October 24, 2006 Press Release is attached hereto as  
4 "Exhibit B." The October 24 Press Release announced the Express Upgrade to Windows  
5 Vista and Microsoft Office Technology Guarantee offerings and contained Microsoft's  
6 recommendation "that buyers consider Windows Vista Capable PCs that are designated  
7 Premium Ready, and specifically such PCs loaded with Windows XP Professional, Windows  
8 XP Tablet PC Edition or Windows XP Media Center Edition 2005 [because] PCs that are  
9 designated as Premium Ready can deliver the core Windows Vista experiences, plus features  
10 such as the Windows Aero™ user experience and Media Center." Exh. B at 3. A footnote  
11 immediately following Microsoft's recommendation noted that "[s]ome functionalities require  
12 specific hardware components." *Id.*

13           13. In conjunction with the October 24 Press Release, Microsoft also pre-briefed  
14 business, trade, metro and consumer publications about the announcement and the  
15 recommendation that consumers consider Windows Vista Capable PCs that are designated  
16 Premium Ready, including The Wall Street Journal, The Associated Press, CNET Networks,  
17 Reuters, Bloomberg L.P., eWeek.com, Information Week, The Seattle Times Co., The Seattle  
18 Post-Intelligencer and Consumer Reports Magazine. Microsoft also briefed industry analysts  
19 from organizations including Endpoint Technologies Associates, Inc., Gartner, Inc., Enderle  
20 Group, IDC and Jupiter Research, LLC so that those analysts could inform their clients and  
21 the public about the Express Upgrade to Windows Vista and Microsoft Office Technology  
22 Guarantee offerings, including Microsoft's recommendation that consumers consider  
23 Windows Vista Capable PCs that are designated Premium Ready.

1 I declare under penalty of perjury that the foregoing is true and correct.

2 Executed this 16 day of November, 2007.

3  
4   
5 MICHAEL BURK

# EXHIBIT A

**For Release 9 a.m. PDT  
May 18, 2006**

## **Microsoft and PC Manufacturers Make It Easier for Customers to Get Ready for Windows Vista**

*Customers can prepare for the future with the help of new "Get Ready" Web site, Windows Vista Capable and Premium Ready PCs, and the Windows Vista Upgrade Advisor.*

**REDMOND, Wash. — May 18, 2006 —** As they prepare for the arrival of Windows Vista™, customers shopping for new PCs or upgrading their hardware now have more comprehensive guidance to aid them in their decisions. Today, Microsoft Corp. announced the launch of the Windows Vista "Get Ready" Web site, the worldwide availability of Windows Vista Capable PCs, the upcoming availability of Premium Ready PCs and the availability of the Windows Vista Upgrade Advisor beta.

"Customers have many options and choices to make when it comes to buying a PC today. A wide range of form factors, price points and new technologies figure into their decisions," said Mike Sievert, corporate vice president of Windows® Product Management and Marketing at Microsoft. "With that in mind, Microsoft and OEMs are making it easier to prepare for the arrival of Windows Vista. Customers now have the information they need to get a great Windows XP-based PC today that will deliver rich Windows Vista experiences tomorrow."

### **The Best Place to Go to Get Ready**

Microsoft today launched the Windows Vista "Get Ready" Web site. The new site, available at <http://www.windowsvista.com/getready>, provides a variety of information and tools customers can use to prepare for Windows Vista. Today, this includes information on Windows

- more -



Vista Capable and Windows Vista Premium Ready PCs, details on how customers can use the Windows Vista Upgrade Advisor beta, and background on the different editions of Windows Vista. The site will be regularly updated with more information related to the forthcoming release of Windows Vista.

### **Windows Vista Capable PCs and Windows Vista Premium Ready PCs**

Windows Vista is the first operating system that truly scales based on the hardware capabilities of the computer on which it is installed. All editions of Windows Vista will deliver innovations in core operating system experiences, including security, reliability and management of the PC, organizing, managing and finding information, and methods for connecting with people, places and devices at home, at work or on the go. Premium editions of Windows Vista — such as Windows Vista Home Premium, Windows Vista Business or Windows Vista Ultimate — will offer even more value by delivering premium features and advanced experiences.

To help customers make informed decisions when buying new PCs, Microsoft today announced the availability of Windows Vista Capable PCs and the forthcoming availability of Windows Vista Premium Ready PCs. Through the Windows Vista Capable program, Windows XP-based PCs that are powerful enough to run Windows Vista are now available from leading PC manufacturers worldwide, including Acer Inc., Dell Inc., Fujitsu Computer Systems Corporation, Gateway Inc., HP, Lenovo, NEC Corp., Sony Corp., Toshiba and more. The Windows Vista Capable logo is designed to assure customers that the PCs they buy today will be ready for an upgrade to Windows Vista and can run the core experiences of Windows Vista.

Microsoft also is working with PC manufacturers to introduce Windows Vista Premium Ready PCs. Windows Vista Capable PCs can earn the Premium Ready designation by meeting or exceeding the requirements outlined below. A Premium Ready designation ensures that the PC

- more -

will deliver even better Windows Vista experiences, including Windows Aero™, a new user experience designed to deliver a productive, high-performing desktop interface. Microsoft recommends that customers seeking the best experiences with Windows Vista ask for PCs that are Premium Ready or choose PCs that meet or exceed the Premium Ready requirements.

“Dell is focused on designing systems today that will enhance the effectiveness of the features of Microsoft® Windows Vista tomorrow,” said John Medica, senior vice president of the Product Group at Dell. “We are working closely with Microsoft to ensure the best user experience on currently shipping performance desktops, workstations and notebooks, and customers can be confident that their high-performance Dell configuration can make the most of the next-generation capabilities of Microsoft Windows Vista.”

“Gateway PCs are optimized to take advantage of the increased usability, reliability, security and functionality that will be available with Windows Vista,” said Greg Memo, senior vice president of Products, Marketing and Web at Gateway. “The vast majority of our consumer and business PCs are already Windows Vista Capable and many are Premium Ready, ensuring that they will seamlessly run Windows Vista when it becomes available.”

“Windows Vista will create a more dynamic computing environment for both corporate and small-business users, and customers need to know that they can buy a system today fully capable of running Windows Vista when it becomes available,” said Philippe Davy, vice president of Strategic Alliances at Lenovo. “Lenovo is working closely with Microsoft to ensure that we deliver a powerful, innovative PC experience. Windows Vista Capable PCs and Premium Ready PCs from Lenovo will help provide customers that peace of mind.”

“Microsoft and Toshiba are working closely together to ensure our notebook customers worldwide are aware of the dramatically enhanced computing experience Vista will offer,” said

- more -

Hisatsugu Nonaka, Toshiba corporate senior vice president and president and CEO, Toshiba PC and Network Company. "We want our customers to choose a Toshiba notebook computer that is Windows Vista Capable or Windows Vista Premium Ready so they are prepared for this exciting new operating system."

To qualify as Capable or Premium Ready, PCs must meet or exceed the following requirements:

	<b><u>Windows Vista Capable</u></b>	<b><u>Windows Vista Premium Ready</u></b>
Processor:	Modern processor (at least 800 MHz) <sup>1</sup>	1 GHz 32-bit (x86) or 64-bit (x64) <sup>1</sup>
System Memory:	512 MB	1 GB
GPU:	DirectX <sup>®</sup> 9 capable (Windows Display Driver Model (WDDM) support recommended)	Runs Windows Aero <sup>2</sup>
Graphics Memory:	--	128 MB
HDD:	--	40 GB
HDD Free Space:	--	15 GB
Optical Drive:	--	DVD-ROM drive <sup>3</sup>
Audio:	--	Audio output capability
Internet:	--	Internet access capability

Some features available in specific premium editions of Windows Vista, such as the ability to watch and record live TV, may require additional hardware. More guidance on the requirements for these specific features is available at the "Get Ready" Web site.

### **Windows Vista Upgrade Advisor**

In addition to Windows Vista Capable PCs and Premium Ready PCs, Microsoft today announced the availability of a beta version of the Windows Vista Upgrade Advisor. The Upgrade Advisor is a diagnostic software tool that will help customers choose the edition of Windows Vista that is right for them and determine if their current PCs are ready for an upgrade. The Upgrade Advisor beta also will assess if customers' devices will support the edition and

features of Windows Vista that meets their needs. The Upgrade Advisor beta is available at the “Get Ready” Web site, and Microsoft plans to add additional functionality to the Upgrade Advisor before the general availability of Windows Vista.

Founded in 1975, Microsoft (Nasdaq “MSFT”) is the worldwide leader in software, services and solutions that help people and businesses realize their full potential.

#####

<sup>1</sup> Processor speed is specified as the nominal operational processor frequency for the device. Some processors have power management that allows the processor to run at a lower rate to save power.

<sup>2</sup> Windows Aero requires the following:

- DirectX 9-class graphics processor that supports the following:
  - WDDM
  - Pixel Shader 2.0 in hardware
  - 32 bits per pixel
- Adequate graphics memory
  - 64 MB of graphics memory to support a single monitor less than 1,310,720 pixels
  - 128 MB of graphics memory to support a single monitor at resolutions from 1,310,720 to 2,304,000 pixels
  - 256 MB of graphics memory to support a single monitor at resolutions higher than 2,304,000 pixels
  - Meets graphics memory bandwidth requirements, as assessed by Windows Vista Upgrade Advisor running on Windows XP

<sup>3</sup> A DVD-ROM can be external (not integral or built into the system)

Microsoft, Windows Vista, Windows, Aero and DirectX are either registered trademarks or trademarks of Microsoft Corp. in the United States and/or other countries.  
The names of actual companies and products mentioned herein may be the trademarks of their respective owners.

**For more information, press only:**

Craig Cincotta, Waggener Edstrom Worldwide, (425) 638-7000,  
craigc@waggeneredstrom.com  
Rapid Response Team, Waggener Edstrom Worldwide, (503) 443-7070,  
rrt@waggeneredstrom.com

*Note to editors:* If you are interested in viewing additional information on Microsoft, please visit the Microsoft Web page at <http://www.microsoft.com/presspass> on Microsoft’s corporate information pages. Web links, telephone numbers and titles were correct at time of publication, but may since have changed. For additional assistance, journalists and analysts may contact Microsoft’s Rapid Response Team or other appropriate contacts listed at <http://www.microsoft.com/presspass/contactpr.mspx>.

## **EXHIBIT B**

**For Release 1:15 p.m. PDT  
Oct. 24, 2006**

**Microsoft, Industry Partners Offer Early Holiday Gifts to PC Buyers Across the World**

*Microsoft working with PC manufacturers and system builders to provide holiday PC buyers with low-cost upgrades to Windows Vista and the 2007 Microsoft Office release.*

**REDMOND, Wash. — Oct. 24, 2006** — Microsoft Corp. today announced programs to provide holiday shoppers with low-cost upgrades to Windows Vista™ and the 2007 Microsoft® Office release with the purchase of a new Windows Vista Capable personal computer. Microsoft is working with participating computer manufacturers and system builders that plan to sell PCs loaded with Windows® XP or pre-installed with 2003 Microsoft Office software to make the Express Upgrade to Windows Vista and Microsoft Office Technology Guarantee programs available to consumers and small businesses from Oct. 26, 2006, through March 15, 2007.

“Our customers can shop for a new PC with confidence this holiday season because of the Express Upgrade to Windows Vista and Office Technology Guarantee programs,” said Mike Sievert, corporate vice president of Windows Client Marketing at Microsoft. “These programs ensure people will have a great experience with their Windows XP-based PCs today, and an even better one when Windows Vista and the 2007 Microsoft Office release become available.”

A number of computer manufacturers worldwide have confirmed plans to participate in the Express Upgrade to Windows Vista program. PCs carrying the Windows Vista Capable logo may be eligible for the program, but upgrade offers will vary from PC maker to PC maker. The upgrade to Windows Vista may be offered for free or at a discounted price (shipping and

- more -

*Microsoft, Industry Partners Offer Early Holiday Gifts to PC Buyers Across the World*

*Page 2*

handling charges may also apply), and customers should check with PC makers for their specific offers. They can also visit <http://www.windowsvista.com/expressupgrade> for more information.

Microsoft will be working with participating smaller PC makers, known as system builders, to provide customers with upgrade coupons for Windows Vista with the purchase of a qualifying Windows Vista Capable PC. The offer will vary by region, but in the U.S., upgrades from Windows XP Media Center Edition 2005 to Windows Vista Home Premium, and upgrades from Windows XP Professional, Windows XP Tablet PC Edition, and Windows XP Professional x64 Edition to Windows Vista Business and Windows Vista Business 64, will be offered for a nominal fee. Upgrades from Windows XP Home Edition to Windows Vista Home Basic and to Windows Vista Home Premium will be offered at 50 percent discount from the boxed product upgrade price, plus the cost of shipping and handling.

Microsoft will also offer customers the ability to upgrade to comparable editions of the 2007 Microsoft Office release when they purchase PCs pre-installed with qualifying Microsoft Office 2003 software. For Microsoft Office purchases made through participating computer manufacturers in qualifying locations, customers will receive upgrades to comparable 2007 Microsoft Office release products for the cost of shipping and handling when the product becomes available. For purchases of Microsoft Office through a system builder, customers will need to provide valid proof of purchase and cover shipping and handling costs associated with the upgrade. Customers in North America will receive a coupon with the purchase that must also be submitted.

Similar programs are available on a region-by-region basis for Microsoft Office 2003 and Windows XP boxed product. Customers should check with their local retailers to learn more about these specific programs.

- more -

*Microsoft, Industry Partners Offer Early Holiday Gifts to PC Buyers Across the World*

*Page 3*

For all holiday purchases of machines loaded with Windows XP, Microsoft recommends that buyers consider Windows Vista Capable PCs that are designated Premium Ready, and specifically such PCs loaded with Windows XP Professional, Windows XP Tablet PC Edition or Windows XP Media Center Edition 2005. PCs that are designated as Premium Ready can deliver the core Windows Vista experiences, plus features such as the Windows Aero™ user experience and Media Center\*. For more information on what version of Windows Vista is right for them, buyers can visit <http://www.microsoft.com/windowsvista/getready/capable.mspx>.

Founded in 1975, Microsoft (Nasdaq "MSFT") is the worldwide leader in software, services and solutions that help people and businesses realize their full potential.

#####

\*Some functionalities require specific hardware components.

**For more information, press only:**

Jessica Coffman, Waggener Edstrom Worldwide, (425) 638-7000,  
[jessicac@waggeneredstrom.com](mailto:jessicac@waggeneredstrom.com)  
Rapid Response Team, Waggener Edstrom Worldwide, (503) 443-7070,  
[rrt@waggeneredstrom.com](mailto:rrt@waggeneredstrom.com)

*Note to editors:* If you are interested in viewing additional information on Microsoft, please visit the Microsoft Web page at <http://www.microsoft.com/presspass> on Microsoft's corporate information pages. Web links, telephone numbers and titles were correct at time of publication, but may since have changed. For additional assistance, journalists and analysts may contact Microsoft's Rapid Response Team or other appropriate contacts listed at <http://www.microsoft.com/presspass/contactpr.mspx>.

- more -